



March v. State

892 N.E.2d 252 (2008) | Cited 0 times | Indiana Court of Appeals | August 5, 2008

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

MEMORANDUM DECISION

NOT FOR PUBLICATION

Delores March contends that the trial court abused its discretion in admitting her confession at her trial for class D felony theft. We affirm.

The facts most favorable to the jury's verdict indicate that in mid August of 2006, Joseph Canut, regional director of loss prevention for Family Dollar Stores, sent a report to the district manager of his region regarding late deposits by some of its stores. Canut requested that the district managers visit the stores of their districts and verify that the stores' receipts were being properly deposited in the bank. As a result of the request, on Friday, August 18, 2006, District Manager Richard Depp went to the Family Dollar Store at 2011 Broadway Street in Fort Wayne to check on the store's deposits. Depp compared the store's deposit log with the validated deposit slips received from the bank and discovered that two deposits had not been deposited in the bank and were unaccounted for. The first missing deposit was from August 15, 2006, for \$3,306.49, and the second, from August 16, 2006, was for \$3,522.58.

When Depp asked March, the store manager, where the deposits were, she told him that they had been deposited in the bank's drop box earlier that morning. Depp made the assistant manager, Ray Gearhart, solely responsible for the store's future deposits, and the next day Depp took Gearhart to the bank to make the Saturday deposit. Depp told Gearhart to leave the Sunday deposit in the store's safe and that he would personally come by the store on Monday and take the deposit to the bank. On Monday, August 21, 2006, Depp obtained all the deposit validation slips from the bank and returned to the store to compare those slips with the store's deposit log. When Depp returned to the store, March approached him and told him that she had not been fully truthful with him regarding the deposits. Depp went to his office, checked the validation slips against the deposit log, and determined that the two deposits were still missing. March's initials were signed under the relevant dates in the deposit log, indicating that she had taken the deposits to the bank on those days. Depp contacted Canut about the discrepancies between the deposit slips and the store's deposit log. Depp brought March into the office, where Canut interviewed her over the telephone.



March v. State

892 N.E.2d 252 (2008) | Cited 0 times | Indiana Court of Appeals | August 5, 2008

Prior to the interview, March signed an interview consent form, witnessed by Depp. During the interview, March admitted to Canut that she took the \$6,829 that had not been deposited. Per Canut's request, March wrote a letter of apology in which she recited the details of her theft. Canut then had Depp call the police, who arrived and took March into custody. After waiving her Miranda rights, March gave a statement to the police admitting that she took the \$6,829. On February 26, 2007, the State charged March with class D felony theft. On December 12, 2007, a jury found March guilty as charged. This appeal ensued.

March contends that the trial court erred in admitting her confession. At the outset, we note that although March filed a motion in limine to exclude her confession, she failed to raise an objection to the admission of her confession at trial when the State offered it into evidence. Failure to lodge a contemporaneous objection at the time the evidence is offered results in waiver of the claim. See *Britt v. State*, 810 N.E.2d 1077, 1080 (Ind. Ct. App. 2004). Waiver notwithstanding, we address the merits of March's appeal.

March contends that the State failed to establish sufficient independent evidence, aside from her confession, that she committed theft. The admission or exclusion of evidence is a determination entrusted to the trial court's discretion. *Farris v. State*, 818 N.E.2d 63, 67 (Ind. Ct. App. 2005), trans. denied. "We will reverse a trial court's decision only for an abuse of discretion. An abuse of discretion occurs when the trial court's action is clearly erroneous and against the logic and effect of the facts and circumstances before it." *Id.*(citation omitted).

A defendant's extra-judicial confession is not admissible unless there is independent proof of the corpus delicti. *Oberst v. State*, 748 N.E.2d 870, 874 (Ind. Ct. App. 2001), trans. denied. "To establish the corpus delicti, the State must produce evidence, other than the confession, that demonstrates: (1) the occurrence of the specific kind of injury; and, (2) someone's criminal act as the cause of the injury." *Id.* (citations and quotation marks omitted). The corpus delicti need not be shown beyond a reasonable doubt; rather, the evidence must merely "provide an inference that a crime was committed." *Shanabarger v. State*, 798 N.E.2d 210, 215 (Ind. Ct. App. 2003) (citations and quotation marks omitted), trans. denied. That inference may be established through circumstantial evidence. *Id.*

1

Here, the evidence shows that March was responsible for two missing deposits. March's initials were signed under the relevant dates in the store's deposit log, indicating that she had taken the deposits to the bank on those days. Further, March told Depp that she had not been fully truthful with him regarding the deposits. In light of these facts, we conclude that the State provided sufficient independent evidence to establish the corpus delicti. Therefore, the trial court did not abuse its discretion in admitting March's confession.

Affirmed.



March v. State

892 N.E.2d 252 (2008) | Cited 0 times | Indiana Court of Appeals | August 5, 2008

KIRSCH, J., and VAIDIK, J., concur.

1. To the extent March argues that the State was required to establish the corpus delicti before her confession could be introduced, we note such "stringent rules of order of proof" no longer apply. *Beal v. State*, 453 N.E.2d 190, 195 (Ind. 1983).

